

Exhibit DD

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YATRAM INDERGIT, ON BEHALF OF)	
HIMSELF AND OTHERS SIMILARLY)	
SITUATED,)	
)	
)	PLAINTIFF,) CASE NO.
)) 1:08-CV-09361
)) -PGG-HBP
vs.)	
)	
RITE AID CORPORATION, RITE AID OF)	
NEW YORK, INC., AND FRANCIS OFFOR AS)	
AIDER & ABETTOR,)	
)	
)	DEFENDANTS.)
)	

DEPOSITION OF NICHOLAS GAUGER
TAKEN MONDAY, AUGUST 8, 2011
LOS ANGELES, CALIFORNIA

Reported by Audra E. Cramer, CSR No. 9901

1 clubs?

2 "Answer: No. You asked me that
3 question already.")

4 MS. FALCONE: Why don't we take a break. We've
5 been going about an hour.

6 (Recess taken.)

7 MS. FALCONE: I have that it's 11:16 a.m.

8 Q. Mr. Gauger, I just want to make sure you
9 understand. Audra swore you in at the beginning of the
10 day this morning. We're going to take breaks. She's
11 not going to swear you in every time we come back, but
12 whenever we're on the record at this deposition, you're
13 under oath.

14 Do you understand?

15 A. Yes.

16 Q. Did you review any documents during the break?

17 A. No.

18 Q. Do you agree with me that the store manager is
19 the highest-level manager in the store at Rite Aid?

20 A. Define "highest."

21 Q. There's no one who outranks the store manager
22 in the store. Do you agree with that?

23 A. No.

24 MR. PRICE: Objection. Form.

25

1 BY MS. FALCONE:

2 Q. Who works in the store that outranks the store
3 manager?

4 A. Pharmacy manager.

5 Q. The pharmacy manager outranks the store
6 manager, or is that the same level?

7 A. Well, it's not just the highest though.

8 Q. Okay. So if I'm understanding you correctly,
9 the store manager and the pharmacy manager are at the
10 same level; correct?

11 A. Correct. It's a partnership.

12 Q. Is there a job position in the store that
13 outranks the store manager?

14 A. No.

15 Q. Do you agree with me that the store manager is
16 in charge of the store?

17 MR. PRICE: Objection. Form.

18 THE WITNESS: Partially.

19 BY MS. FALCONE:

20 Q. Why do you say "partially"?

21 A. Because the store manager's somewhat in charge
22 of the store; however, there is a district manager
23 inside the store on a routine basis micromanaging the
24 tasks that are at hand that he or she will direct.

25 Q. Do you think that every single DM at Rite Aid

1 is a micromanager?

2 MR. PRICE: Objection. Form.

3 THE WITNESS: I have no idea.

4 BY MS. FALCONE:

5 Q. So you're speaking based on your experience.

6 A. My experience with a couple district managers
7 that I've had, yes.

8 Q. Who are those district managers?

9 A. Jason.

10 Q. Jalili?

11 A. Correct.

12 And Dan.

13 Q. Dan?

14 A. Dan Salcedo.

15 Q. So Mr. Jalili and Mr. Salcedo were
16 micromanagers?

17 A. Correct.

18 Q. Was Mr. Petit a micromanager?

19 A. No.

20 Q. Is it correct that you customarily refer to the
21 store that you were assigned to as your store, or --

22 A. Meaning --

23 Q. -- "my store"?

24 A. I'm sorry.

25 Q. Did you refer to the stores that you were

1 Q. You write under item No. 6 -- there's a
2 sentence that begins, "Another good attribute of being
3 aggressive ..."

4 Do you see that?

5 A. Uh-huh.

6 Q. You write, "Another good attribute of being
7 aggressive is how to maximize sales, as in stock and
8 being aggressive with vendors for their support has
9 helped me succeed in this past year."

10 A. Correct.

11 Q. How were you aggressive with vendors for their
12 support?

13 A. By allowing them to merchandise different
14 things. Because vendors -- for instance -- for an
15 example, vendors are somewhat free labor. So if you
16 receive something from Frito-Lay and it's a display,
17 they'll put it out; versus being more aggressive with
18 warehouse delivery due to the fact that Rite Aid does
19 not give you more hours based on more delivery. So I
20 would be more aggressive with vendor-related
21 merchandise.

22 Q. So you made a decision to be more aggressive in
23 getting vendors to put up displays; correct?

24 A. Correct. But there was no displays that we
25 could really do at store level either.

1 Q. I'm not really asking you about that. What I'm
2 asking you about is: How were you aggressive with
3 vendors?

4 So did you go out and pursue vendors or suggest
5 to them, you know, "Would you like to increase your
6 display in the store?"

7 MR. PRICE: Objection. Form.

8 THE WITNESS: We had no control over the,
9 per se, vendors, the vendors that are directed to go to
10 our store. The company makes the decision on who the
11 vendors are, so we had no control over that. However,
12 from the standpoint of the vendors that were allowed to
13 come in, we could bridge by different items or display
14 different items.

15 BY MS. FALCONE:

16 Q. Right. And if I'm understanding you correctly,
17 you aggressively sought out vendors who were willing to
18 do that; correct?

19 A. Correct.

20 Q. And part of the reason you did that is because
21 you knew that would put displays and product in your
22 store without you needing to use labor to do it?

23 A. We didn't have the labor; that was my point.

24 Q. Go ahead.

25 A. That was my point that I was trying to discuss,

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1 that I had to be aggressive with them, because that was
2 where I was getting the labor from. They're free labor.
3 We only had -- we had strict budgets.

4 Q. Right. And you made a decision that one way
5 you could work around the labor budget was to pursue
6 vendors to put in displays; is that true?

7 A. Correct.

8 Q. Did someone tell you to make that decision, or
9 did you make it on your own?

10 A. Partly.

11 Q. Partly someone told you?

12 A. Yes.

13 Q. Who told you?

14 A. Sometimes a district manager would force
15 different displays on to us as well and different
16 company programs that were directed out on the DSD
17 planner and our profit planner.

18 Q. Which vendors were you aggressive with for
19 their support?

20 A. Beer and chips.

21 Q. And what companies? What beer companies? What
22 chip companies?

23 A. Ace Beverage Company, Classic Distributing and
24 Frito-Lay.

25 Q. And did you select those vendors as the ones

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1 Q. And how long were you working in that store?

2 A. Nine days.

3 Q. Other than that nine days, do you have any
4 experience working in New York?

5 A. No.

6 And I was in the suburban part of New York.
7 They only use co-managers in Manhattan.

8 Q. Have you ever worked at a store that had
9 co-managers?

10 A. No, not to my knowledge.

11 Q. Over the last three years, you worked with how
12 many different shift supervisors in your capacity as a
13 store manager?

14 A. 20 to 30.

15 Q. And were any of them promoted?

16 A. One. But that was, like, right after I left
17 Monterey Park.

18 Q. Okay. Did you have any role in promoting that
19 person?

20 A. Did I have any role?

21 Q. Yes.

22 A. No.

23 Q. Did anyone ask you whether you thought the
24 person should be promoted?

25 A. Jason had a question or two, but that's about

1 it.

2 Q. So the district manager called and asked you
3 some questions about the person's potential promotion?

4 A. Correct.

5 Q. Do you know to what extent he relied on the
6 information you provided?

7 A. Very little, because he had asked me a year
8 prior to her promotion.

9 Q. Why does that make you think that your feedback
10 had very little impact?

11 A. Because there was other openings during that
12 course of the year that she was never promoted.

13 Q. Do you know whether there were other people who
14 received a more, you know, ringing endorsement from
15 their store manager?

16 A. No, because he hired externally.

17 Q. Were any of the 20 to 30 shift supervisors that
18 you worked with in the last three years demoted?

19 A. Not to my knowledge.

20 Q. Were any of the 20 to 30 shift supervisors that
21 you worked with in the last three years terminated?

22 A. One of them, which I had already mentioned, for
23 attendance. And one of them did after my tenure at a
24 location due to fraud. Anything other than that, no.

25 Q. Where was the person terminated due to fraud?

1 A. Monterey Park, 5597.

2 Q. Did you have any role in bringing the fraud to
3 light?

4 A. No. I was unaware of all of it actually.
5 Surprised.

6 Q. How did it come to light that the person was
7 engaged in fraud?

8 A. Loss prevention manager.

9 Q. Your stores' labor budgets, were they given to
10 you in dollars?

11 A. At the time, yes.

12 Q. How was the labor budget provided to you?

13 A. Meaning?

14 Q. Was it e-mailed to you? Did someone tell you
15 what the budget was? Was it in a report you could look
16 at?

17 How was it provided?

18 A. It was on the scheduling matrix.

19 Q. And you could use overtime if necessary; right?

20 A. No.

21 Q. Never?

22 A. Preferably not. You had to get district
23 manager approval. Overtime was defined as unproductive
24 labor because it was paying one person for an hour and
25 them getting paid one hour and a half.

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1 Q. Right. But part of your job was also watching
2 them to make sure they did it and addressing it with
3 them if they weren't doing it; right?

4 A. Right. But you -- what was the question?

5 MS. FALCONE: Audra, can you read it back.

6 (Record read as follows:

7 "Question: As a store manager, how
8 much time do you think you spent
9 managing other store employees or
10 directing their performance of the
11 work?")

12 THE WITNESS: That's just directing their work.
13 I was just, like, delegating the task. That's how I
14 took it as.

15 BY MS. FALCONE:

16 Q. Okay. But I'm including any time where you
17 made a decision to say to somebody, "Hey, I want you to
18 stop doing what you're doing and go up to the
19 checkstand" or "I want you to go, you know, help with
20 the truck unload," or something like that.

21 A. Well, other associates would call other
22 associates up to the checkstand using the intercom
23 system. And associates assisting help unload, it would
24 already be delegated on their workboard as to their
25 assigned functions and if they needed to multitask and

1 work checkstand occasionally at the same time.

2 Q. Did you interview prospective employees?

3 A. Yes.

4 Q. Would you conduct the initial interview?

5 A. Yes.

6 Q. Would anyone else assist you in conducting it?

7 A. Sometimes my human resource manager, the talent
8 manager or the district manager or other assistant
9 managers.

10 Q. Okay. What employees did you have the
11 authority to hire? For what positions, I mean.

12 MR. PRICE: Objection. Form.

13 THE WITNESS: None.

14 BY MS. FALCONE:

15 Q. As to what positions did you have input as to
16 who should be hired to fill a vacancy?

17 A. All positions. All store operational
18 positions.

19 Q. You didn't appoint the CEO, but if it was a job
20 within your store, you got to have input into who should
21 be placed in that job; true?

22 A. Correct.

23 Q. How would you decide when a new associate was
24 needed in your store?

25 A. How did I decide?

1 Q. Yes.

2 A. When somebody got fired.

3 Q. Okay. Would you always fill a position if
4 someone got fired?

5 A. No.

6 Q. How did you decide whether or not that job
7 should be filled?

8 A. If I had available dollars on the table.

9 Q. Was your labor budget ever increased?

10 A. No.

11 Q. For none of your stores?

12 The labor budget was always exactly the same
13 from the first day you got there to the last day you
14 left?

15 A. There was -- there was a time at Monterey Park
16 it went up because of sales; however, historically, the
17 budgets have drastically been cut.

18 Q. When your budget went up at Monterey Park, did
19 you have an opportunity to consider whether you should
20 be hiring for another body?

21 A. I did contact my human resource manager. Based
22 on union, we always have to go through human resource
23 manager to ensure that there's no current layoffs. So
24 it's not my ultimate decision.

25 Q. Because someone might have recall rights;

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Reported by Audra E. Cramer, CSR No. 9901

1 MS. FALCONE: Asked and answered.

2 THE WITNESS: Well, just like the sales floor,
3 it's very similar. There's general merchandise in the
4 front and behind the checkstand that you would stock to
5 create efficiency for your employees and efficiencies
6 within the store. Like, talking about lead by example,
7 if I'm behind the cash register, I'm going to complete
8 tasks. I'm not just going to stand behind the
9 cash register with no associates to manage behind the
10 cash register. So I would, you know, complete stocking
11 the merchandise and completing planograms, if any,
12 behind the counter.

13 BY MR. PRICE:

14 Q. So you worked the cash register?

15 MS. FALCONE: Objection. Leading.

16 THE WITNESS: Very much so.

17 BY MR. PRICE:

18 Q. Do you consider working the cash register a
19 nonmanagerial task or a managerial task?

20 MS. FALCONE: Objection. Calls for a legal
21 conclusion. Vague.

22 THE WITNESS: I consider it a nonmanagerial
23 task.

24 BY MR. PRICE:

25 Q. How do you define a nonmanagerial task?

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1 A. Nonmanagerial task would be you not having the
2 time -- let me rephrase that. Strike that.

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3         Having -- when there's no associates present
4     and you're doing a function that store associates or
5     hourly store associates can complete.

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6 Q. So why did you perform these nonmanagerial
7 tasks as a store manager?

8 MS. FALCONE: Objection. Calls for
9 speculation. Vague.

10 THE WITNESS: I would have to perform cashier
11 register duties due to the budgeting within the store.
12 In some locations the hours are very cut, so even if you
13 map out all the hours and try to calculate all the
14 associates to be triple-staffed, it would be impossible
15 at all hours of the day. So it's very difficult for a
16 store manager to just manage people, so you would have
17 to indulge [sic] yourself in other tasks.

18 BY MR. PRICE:

19 Q. As a store manager, what percentage of your
20 time on average did you spend doing nonmanagerial tasks?

21 MS. FALCONE: Objection. Vague. Vague as to
22 time.

23 THE WITNESS: I would say anywhere between
24 50 to 70 percent of my time was nonmanagerial. I kind
25 of believe that a lot of it's nonmanagerial due to the

1 fact that -- you know, kind of there has to be
2 associates there to manage actually. You know, I'm not
3 an executive of a company making corporate decisions,
4 making corporate buys, making, you know, corporate
5 pricing, corporate budgeting or planning. I'm not
6 planning out the hours for the store, you know, the
7 opening and closing hours. I can make suggestions, but
8 that's about it.

9 BY MR. PRICE:

10 Q. There was some testimony earlier today
11 regarding managers delegating tasks, and you testified
12 that you need to have the associates to delegate to.

13 Do you recall that testimony?

14 A. Yes.

15 MS. FALCONE: Objection. The record speaks for
16 itself.

17 BY MR. PRICE:

18 Q. What do you mean by that?

19 MS. FALCONE: Objection. Calls for a
20 narrative.

21 THE WITNESS: Sorry. That you have to have --
22 can she bring up the narrative, or no?

23 BY MR. PRICE:

24 Q. You can just answer my question --

25 A. Okay. Sorry.

1 Q. -- and I can repeat it if you need me to.

2 A. Go ahead. Repeat it.

3 Q. There was some testimony earlier today
4 regarding managers delegating tasks, and you testified
5 something to the effect that you need to have associates
6 to delegate to.

7 A. Correct.

8 Q. What did you mean by that statement? If you'd
9 expand on that, please.

10 MS. FALCONE: Objection. Calls for a
11 narrative.

12 THE WITNESS: Just as mentioned, different
13 stores have different situations. In some of my
14 locations I was the only manager or the manager on duty,
15 and then there was another associate, such as the
16 pricing coordinator, which her job description is to do,
17 roughly speaking, 40 hours of already a boom-boom-boom
18 task assignment. So if you're just opening with them,
19 you have no other associate that you can delegate tasks
20 to. So you would have to do those tasks yourself, be it
21 that it's cleaning the checkstand, doing a planogram at
22 the checkstand, running back and forth cleaning the
23 cosmetic area, doing photos in the photo department,
24 scooping ice cream, assisting customers alike. It was
25 an everyday occurrence.

1 BY MR. PRICE:

2 Q. If you as the store manager controlled the
3 schedule, why didn't you just schedule more people to
4 help you out so you didn't have to do these
5 nonmanagerial tasks?

6 A. Because there was not associates or hours
7 available to schedule them for.

8 Q. Why weren't there?

9 MS. FALCONE: Objection. Calls for
10 speculation.

11 THE WITNESS: Because the company gives out
12 plans, and we're dictated that we have to be under those
13 dollar budgets, and now hour budgets.

14 BY MR. PRICE:

15 Q. Where do the plans come from within the
16 company?

17 MS. FALCONE: Objection. Calls for
18 speculation.

19 THE WITNESS: Where do they come from?

20 MS. FALCONE: Vague as to time.

21 THE WITNESS: Corporate. I'm not quite too
22 sure the specific individual that handles labor analysis
23 within a store location.

24 BY MR. PRICE:

25 Q. Who gave you the allotted time that you had?

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1 MS. FALCONE: Objection. Asked and answered.

2 THE WITNESS: Workforce Management. It's a
3 tool that we create the schedule for, and it's just
4 always in there. So if it says 330 hours, we have to be
5 under 330 hours. Or \$3,000, we have to be under \$3,000.

6 BY MR. PRICE:

7 Q. Is it your understanding that all store
8 managers use the same tool?

9 MS. FALCONE: Objection. Calls for
10 speculation.

11 THE WITNESS: Correct. All store managers to
12 my knowledge use the same Workforce Management tool,
13 99.9 percent of the time.

14 BY MR. PRICE:

15 Q. And do you know if all the store managers had
16 the same restraints on them imposed through the tool?

17 MS. FALCONE: Objection. Calls for
18 speculation. Vague.

19 THE WITNESS: Yes.

20 BY MR. PRICE:

21 Q. And did they have the same restraints as you?

22 MS. FALCONE: Objection. Calls for
23 speculation. Vague.

24 THE WITNESS: Yes, they had the same
25 restrictions. Some had worse restrictions. Some had

1 more based on the operating hours or their hourly
2 budgets within their location.

3 BY MR. PRICE:

4 Q. Because you had to dedicate time to
5 nonmanagerial tasks, did that affect your ability to
6 manage the store?

7 MS. FALCONE: Objection. Vague. Leading.

8 THE WITNESS: Did it affect my ability to
9 manage the associate -- well, the ability to manage the
10 few associates that I had at some of the locations, it
11 didn't affect the ability. I would have to get more
12 hands-on involved to meet the expectations of the
13 company.

14 BY MR. PRICE:

15 Q. How did you do that?

16 A. By completing nonmanagerial duties myself.

17 Q. As a store manager, can you describe the
18 process that you would go through for getting an
19 employee terminated.

20 MS. FALCONE: Objection. Calls for a
21 narrative.

22 THE WITNESS: The process to go through a sales
23 associate termination would be that I'd have to partner
24 with my human resource manager on each corrective
25 directive -- or each corrective action or disciplinary

1 action and get a final say from the human resource
2 manager and/or my district manager to complete a
3 termination in our payroll system.

4 BY MR. PRICE:

5 Q. Could you terminate an employee without the
6 district manager approving it?

7 MS. FALCONE: Objection. Vague. Asked and
8 answered.

9 THE WITNESS: No.

10 BY MR. PRICE:

11 Q. When we looked at Exhibit 16, you testified
12 that HR did not restrict you from writing up employees
13 that did not -- or this particular employee that did not
14 clean the freezer in this situation.

15 A. Uh-huh.

16 Q. Have there been times when you were not
17 permitted by HR to discipline or write up an employee?

18 A. Yes.

19 Q. Can you describe that situation or those
20 situations, please.

21 MS. FALCONE: Objection. Compound.

22 THE WITNESS: There were several situations
23 that I wanted to address with written notices or
24 corrective actions to my associates; however, the human
25 resource department refused based on fairness [sic]

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1 across the district and/or the company. So they were
2 disallowing me to correct the situation at locations
3 based on the situation that occurred.

4 BY MR. PRICE:

5 Q. There's been some testimony about
6 store-budgeted hours, and I want to get an understanding
7 of what, if any, changes there were in store-budgeted
8 hours.

9 So what store were you working in in January
10 of 2008 as a store manager?

11 MS. FALCONE: Objection. Asked and answered.

12 THE WITNESS: January 2008, I was at that time
13 located at 5597.

14 BY MR. PRICE:

15 Q. Were you at the same store in January 2009?

16 A. Yes.

17 Q. What were the store-budgeted hours for that
18 store in January of 2008?

19 MS. FALCONE: Objection. Calls for
20 speculation.

21 THE WITNESS: Roughly about -- I think it
22 was 750 to about 850 hours, depending on the dollars or
23 if one of my high-paid cashiers were on vacation.

24 BY MR. PRICE:

25 Q. And what was the store-budgeted hours for that

1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.

3

4

5 I, NICHOLAS GAUGER, hereby certify under
6 penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

8 Executed this _____ day of

9 _____, 2011, at

10 _____, California.

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NICHOLAS GAUGER

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